

REMARKS

Claims 1-21 remain pending in this application, all of which stand rejected. Based on the foregoing amendments and following remarks, reconsideration and allowance of this application is respectfully requested.

Claim Rejections-35 U.S.C. §102

Claims 1-5, 7, 8, 10, 12-15, and 19-21 stand rejected under 35 U.S.C. §102(b), as being anticipated by U.S. Patent No. 4,913,164 issued to Greene, et al. (“Green”). Applicant respectfully traverses this rejection, since Greene does not disclose each and every element required by these claims.

In particular, while Applicant disagrees with the Examiner that the element 46 of the Green device can be fairly characterized as an “electrode element,” to expedite the prosecution of this application, Applicant has amended claim 1 to require the electrode element to be exposed such that it can contact bodily fluid, and has amended claim 19 to require the electrode element to be contacted with bodily fluid. In contrast, the element 46 of the Green device, to the extent that it can be characterized as an electrode element, is not capable of contacting bodily fluid.

To the extent that the Examiner considers the combination of elements 40, 46, 42 as being an electrode element, the combined electrode element is not prevented from contacting solid tissue by virtue of the fact that a portion of such combined electrode (i.e., element 42) is designed to contact solid tissue. To the extent that the Examiner is inclined to treat the combined element 40, 46, 42 as an electrode element for the purpose of showing that Green discloses an electrode element that contacts bodily fluid, while treating the element 46 as an electrode element for the purpose of showing that Green discloses an electrode element that is prevented from contacting solid tissue, claims 1 and 19 would still not read on Green. That is, under the theory of antecedent basis, claims

1 and 19 require the same electrode element that contacts bodily fluid to also be prevented from contacting solid tissue by a protective element. Thus, it is irrelevant that the combined element 40, 46, 42 contacts bodily fluid, while the element 46 is prevented from contacting solid tissue, since, to the extent that they can be considered electrode elements, the combined element 40, 46, 42 is logically different from the element 46. Therefore, Green does not disclose an electrode element that is capable of contacting bodily fluid while being prevented from contacting solid tissue.

Thus, Applicant submits that independent claims 1 and 19, as well as the claims depending therefrom (claims 2-5, 7, 8, 10, 12-15, 20, and 21), are not anticipated by Greene, and as such, respectfully request withdrawal of the §102 rejections of these claims.

Claim Rejections-35 U.S.C. §103

Claims 6, 9, 11, and 16-18 stand rejected under 35 U.S.C. §103, as being obvious over various combinations of Greene, U.S. Patent No. 6,161,047 issued to King et al. (“King”), and U.S. Patent No. 6,405,067 issued to Mest et al. (“Mest”). Applicant respectfully traverses these rejections, since none of Greene, King, or Mest, disclose, teach, or suggest the combination of elements required by these claims. In particular, as previously discussed, Greene does not disclose an electrode element capable of contacting bodily fluid while being prevented from contacting solid tissue, and King and Mest do not supplement this failed teaching.

Thus, Applicant submits that claims 6, 9, 11, and 16-18 are not obvious over the combination of Greene, King, and Mest, and as such, respectfully request withdrawal of the §103 rejections of these claims.

Conclusion

Based on the foregoing, it is believed that all claims are allowable, and thus, a Notice of Allowance is respectfully requested. If the Examiner has any questions or comments regarding this amendment, the Examiner is respectfully requested to contact the undersigned at (949) 724-1849.

Respectfully submitted,

VISTA IP LAW GROUP LLP

Dated: May 15, 2006

By:



Michael J. Bolan
Reg. No. 42,339

Customer No. 23410
Vista IP Law Group LLP
2040 Main Street, 9th Floor
Irvine, CA 92614